

B. Remarks

In response to the Office action of 16 December 2003, Applicant thanks the Examiner for removing the previously asserted 35 USC 102 and 103 rejections and the statutory double patenting rejection. In the Office action, the Examiner objected to the typographical error in claim 1, which Applicant has corrected in the above provided claim amendments.

In the Office action, the Examiner also issued a nonstatutory double patenting rejection of claims 1 and 3-10 as being unpatentable over claims 1 and 3-10 of U.S. Patent No. 5,790,785. Applicant contends that the co-filed Terminal Disclaimer obviates this nonstatutory double patenting rejection and places all of the pending claims in condition for allowance.

The Examiner also issued a provisional nonstatutory double patenting rejection of claims 1 and 10 over claim 1 of co-pending Application No. 10/411,829. Applicant notes that an Amendment and Response was filed on March 23, 2004 in Application No. 10/411,829 which canceled claim 1 and added new claims 2 – 51. Applicant asserts that claims 2-51 are directed to patentably distinct subject matter from that set forth in the present application. Therefore, after entry of this Preliminary Amendment in the co-pending application, Applicant contends that the provisional double patenting rejection in the present application has been rendered moot and that a terminal disclaimer is not necessary to overcome such provisional rejection.

As such, in light of the present claim amendments, the filing of the attached Terminal Disclaimer and the filing of the Preliminary Amendment, Applicant contends that all grounds for rejection of claims 1 and 3-10 of the present application have been overcome and respectfully request the Examiner to expeditiously issue a Notice of Allowance for all pending claims.

Last, Applicant respectfully notifies the Commissioner under 37 CFR 1.27(g)(2) of the Applicant's desire to change its status from small entity to large entity as of the filing date of this Amendment. Applicant makes this notification in an abundance of caution and in order to avoid


PATENT
Attorney Docket No. 1274/US/3 (formerly 5822.03)
Express Mail Label No. EV447216782US

any future concerns with the payment of appropriate fees should the technology covered by the claims of the present application or in related applications ever be licensed to a large entity.

Should the Examiner have any questions regarding this Amendment, Response, Terminal Disclaimer and the Preliminary Amendment filed in the co-pending application, which may be resolved via telephone, the Examiner is invited to contact Applicant's attorney, John T. Kennedy, at (303) 260-6362.

Dated: April 16, 2004

Respectfully submitted,
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